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"DOUBLE INDEMNITY" OR "ACCIDENTAL DEATH BENEFIT" CLAUSES

Paper read before the Association of Life Insurance Counsel, December 3, 1919, by H. B. Arnold, Counsel of the Midland Mutual Life Insurance Company of Columbus, Ohio,

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When our etseemed President, on behalf of the Executive Committee, invited me to read a paper at this meeting, I advised him that I would not have time to prepare a paper on any legal topic which would be suitable for the meeting but that I had had occasion to make some investigation and study of so-called "double indemnity" clauses in connection with life insurance contracts; and that while my treatment of the subject would extend into its executive and underwriting phases, if he felt the topic was suitable I would be glad to accept the invitation. The response was so hearty that I could not but proceed with the preparation of this paper.

The opportunities for observation and experience which most of you have had are so much greater than mine that it is with some timidity I venture to submit the results of my study of the subject; but if this discussion shall result in greater uniformity in phraseology and practice I shall feel rewarded. Perhaps the fact that my knowledge on some phases of the subject is rather superficial than profound may enable me to inject into the discussion somewhat of the laymen's as well as the official's viewpoint.

Strictly speaking, the benefits and the liabilities contemplated by the so-called "double indemnity" clauses are not within the realm of life insurance, but belong more properly to the business of accident insurance. The convention blanks treat this clause as an "accidental death" benefit and in my opinion this is more accurate terminology. I shall therefore use that term. The company agrees to pay a larger sum than that payable under the life insurance contract, if the death of the insured results from accidental causes. The primary

contract is the life insurance contract, and the additional amount to be paid under such a clause, if death results from accidental causes, is by virtue of a contract which is in some respects independent of the life insurance contract and which is based upon an independent consideration.

I am not in favor of the enlargement of a life insurance contract beyond that which it seems to me is its legitimate scope,—particularly as to features which enter a field of insurance which is separate and distinct from life insurance, and which involve the consideration of factors and elements which are of small importance in the drafting and performance of a life insurance contract.

The disability clause, which is now in general use in connection with life contracts, is of the same character as the Accidental Death Benefit, and to a lesser degree is subject to the same objections; but it seems to me that it is a legitimate function of a life insurance contract and furnishes a valuable service to the insured, if that contract shall take care of the contingency of disability, which might, but for the disability benefit, cause the lapse of the contract and deprive the insured and his beneficiaries of the provision which he had sought to make for himself and them. The adoption of the disability clause by a large number of companies has now made it a recognized feature of life contracts and it evidently is regarded as of great value by the insured.

It does not seem to me that the additional benefit to the insured and his beneficiaries, if the death of the insured is caused by accidental means, comes within the natural scope of a life insurance contract, nor that the benefit has any real relation to that contract and the situation of the insured and his beneficiaries. In my opinion this benefit is more properly a feature of a separate policy of accident insurance. Nevertheless, the Accidental Death Benefit has now been adopted by so many companies and has come into such general use, that I must admit that questions of personal judgment and opinion must yield to the trend of the business. Although it is regrettable that it seems necessary to offer additional inducements to persuade policyholders to take life insurance, yet that the use of this clause results in the placing of a greater amount of life insurance, is, to my mind, its real justification.

The lack of extensive published statistics upon which scientific rates may be made has to a large extent required each company in fixing its rate to depend upon its own experience or upon the charges made by other companies. It will be found that more claims for deaths from accidents will be made when this benefit is given. This absence of a scientific basis upon which the charge should be computed is evidenced by the many restrictions which are inserted and by the varying rates which are charged. Of course the rate should depend upon the language of the particular clause and the construction placed thereon by the management, as well as upon whether commissions are paid, but there is little evidence of uniformity. I have had the opportunity of carefully examining the clauses and of knowing of the practices of some twenty-five companies, and I will endeavor to give you the benefit of an analysis of these clauses, and will deduce therefrom the features which it seems to me should be adopted for the giving of a real service to the insured with reasonable protection to the company.

Some companies include the clause in the life policy, but generally the clause is attached as a rider. In some instances in the policy or in the rider reference is made to the application for life insurance, and the issuance of the rider is based upon that. The exact relation between the rider, (which is for a separate consideration and in some respects is a separate contract), and the application and contract for life insurance, is not entirely clear; and it would be difficult if not impossible to lay down any general rule applicable to all policies and riders. Generally speaking, however, I take it that for some purposes the life and accident benefits would be treated as an entire contract, and for other purposes they might be treated as separate contracts. For instance if there was fraud in the application and the life and accident benefits are issued upon one application, the entire contract might be invalidated,—while the provisions of the life contract which are peculiar to that contract would have no application to the Accidental Death Benefit.

The benefits and provisions of a life policy are to a large extent standardized, and they are free from restrictions and conditions which were frequently used in former years. Some of you will remember the evolution of the crude and complex

life policy of former years to the clear and satisfactory policy of today. It cannot be doubted that the best service which a life insurance company can give is under a contract that is easily understood and is as free as possible from restrictions and conditions,—assuming of course that the charge is commensurate with the liability assumed. However, it seems to me that a better service is rendered to the insured under an Accidental Death Benefit clause if the benefit is substantial, and is expressed in clear language,—with a sufficient charge to cover the risk assumed. It is axiomatic that cheap insurance is not the best, and therefore it seems to me that the companies will give better service if they will furnish clear and substantial benefits, with few restrictions and conditions, and with a charge sufficient to compensate them for the risk assumed.

With this purpose of furnishing the best service to the insured, with reasonable protection to the company, it behooves us to select from the numerous restrictions and conditions those which will best attain it.

Few insurance contracts contain so many "ifs" and conditions. There are usually two provisions for the benefit of the insured and numerous others for the protection of the company. The size of the sheets upon which they are printed varies from 7" x 9" to 11" x 17"; and while some are comparatively short and simple, others contain provisions which are complicated and involved. As the rates are not based on scientific data, and are trivial in amount, the company must properly limit its liability, but should furnish the quantum of protection which the charge may reasonably be expected to purchase.

Among the provisions which it seems to me should not be objectionable to the insured, and which are necessary for the protection of the company, are:

(1). A statement of the amount of the annual premium, and that it is in addition to and payable with the premium on the life policy.

(2). That there can be no recovery if death occurs while there is default in the payment of any life, disability or Accidental Death premium.

(3). That death shall result from "bodily injuries, effected directly, exclusively and independently of all other causes, through external, violent, and accidental means." This is

standard phraseology and in substance is used in all clauses. This language has been in vogue for so many years in accident policies that the construction and application by the courts ought now to be generally uniform. This, however, is not the case. The managements of some companies have attempted to limit the construction to the narrowest meaning, while the courts have sometimes given a construction in favor of the insured that was not justifiable.

It appears to me that the attitude of the management in the allowance of claims should be determined beforehand, and should enter into the charge made. Among the numerous instances where controversies arise as to whether death results from accidental causes under this phraseology, and which the courts have sometimes determined adversely to the companies, are, blood-poisoning, sun-stroke, drowning and asphyxiation.

The following is an extract from a letter recently received by me from one of the most capable of our younger life officials:

> "I think you cannot stress too strongly the necessity for a common understanding at the beginning of the adoption of this double indemnity or accidental death benefit clause between the legal and underwriting departments of the Company as to what it is intended to cover. There are so many opportunities for a purely technical lawyer to find ground for rejecting claims that unless these claims are considered on a broad gauge basis, the Company may find itself in constant turmoil and litigation which will be more adverse to the life department of the company than any benefit that may be derived from this frill to the contract."

The misunderstandings arising from such controversies will be avoided, and perhaps unfavorable judgments will be prevented, if these causes are determined to be within this language and a sufficient rate is charged.

(4). That death must occur during the premium-paying period and not while the policy is in force as extended or paid-up insurance under the non-forfeiture provisions.

The charge for the Accidental Death Benefit is in addition to the premium under the life policy, and if this provision is not inserted the liability would be continued after the premium-paying period or during the extended or paid-up period,

The liability of the Company hereunder is conditioned upon the following: That all premiums under the policy shall have been duly paid and that the policy shall not be in force as extended or paid-up insurance under the non-forfeiture provisions; that death shall ensue within 90 days of the accident and shall not at any time while this benefit is in force be the result of murder or suicide, sane or insane; and that death shall not result from participation in aeronautics nor while the insured is engaged in any kind of military, naval, or police service.

The annual premium for this benefit is $....., and is in addition to and payable with the premium stated in the policy. Said premium shall cease at the anniversary of the policy nearest the insured's attained age of 60 years or when this benefit is cancelled or terminated.

This benefit may be cancelled at any time by the insured by written notice to the Home Office of the Company, and shall be automatically cancelled and shall terminate upon the total and permanent disability of the insured or upon the anniversary of the policy nearest the insured's attained age of 60 years.

Dated at.....the.....day of....., 19....